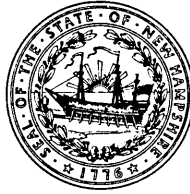


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JUN 22 1988

May 24, 1988

Herman G. Martin, Administrator II  
Bureau of Budget & Finance  
Department of Transportation  
John O. Morton Building - Loudon Road  
Concord, New Hampshire 03301

RE: Camp Sargent Road Funding Source

Dear Mr. Martin:

By letter dated May 3, 1988, you have requested our opinion as to the proper funding source for the Camp Sargent Road reconstruction project in Merrimack, New Hampshire. By Laws of 1983, c. 235, \$1,075,000.00 was appropriated for the reconstruction and relocation of a portion of Camp Sargent Road, not to be expended, encumbered or obligated until the Town of Merrimack provided an equal amount. The Town has since met this obligation.

In 1986, the Legislature promulgated a comprehensive ten-year State highway construction and reconstruction plan. It again included funding for the construction of Camp Sargent road. Designated by the 1986 law as the "Merrimack/Camp Sargent Road project", a part of the Central Turnpike, the specified improvement was to: "[c]omplete connection to Merrimack industrial interchange", with an estimated cost of \$3,000,000.00. Laws of 1986, c. 203:5, II (a)(7). In addition, Chapter 203:12, amends RSA 237:12 by inserting paragraph VII, and grants to the Department of Transportation the authority to "make improvements to the central New



Hampshire turnpike including, but not limited to, "completing the connection to the Merrimack industrial interchange...." And finally, with dual reference in subsection (h) to "Improvements to central New Hampshire turnpike" and RSA 237:2, VII, Chapter 203:13, I amends RSA 237:7, I (Supp.) and provides \$222,800,000.00 therefor.

The question presented is whether the Laws of 1986, c. 203 supercede and impliedly repeal the Laws of 1983, c. 235:1, thereby directing that the funding for the Camp Sargent Road reconstruction be taken from the turnpike fund, rather than the highway fund. The answer to this question, in my opinion, is yes.

Repeal by implication is not favored, but will be construed as such if no reasonable construction of the statutes can be found to avoid it. State v. Miller, 115 N.H. 662 (1975). If two statutes are in conflict, which law is to govern, is a question of legislative intent. Perkins v. New Hampshire Power Company, 90 N.H. 534 (1940). When the natural weight of all competent evidence demonstrates that the purpose of the later statute was to supercede the earlier statute, the later statute will control though it does not expressly repeal the earlier law. Ingersoll v. Williams, 118 N.H. 135 (1978). Further, as is particularly relevant here, where the legislature makes revisions of the subject matter of a statute and by the new statute designs a complete scheme, so much of the former statute as are not mentioned, although not expressly repealed, are superceded. Colby v. Broderick, 96 N.H. 316 (1950); Attorney General ex rel Quinn v. Hunter, 92 N.H. 206 (1943). As a practical matter, repeal of a particular provision of a statute can be done as effectively by implication as by expressed repeal. Statutes, 82 C.J.S. § 286.

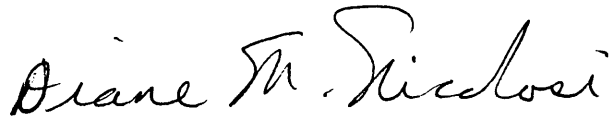
It is apparent from the comprehensive scheme of the 1986 law, by its inclusion of construction and reconstruction projects state wide, that it was intended as a revision of all former inconsistent acts which relate to the same subject matter. The conflict between the 1986 and the 1983 laws is not reconcilable. Read in conjunction, to withdraw the requisite amount of money twice, once from the highway fund and once from the turnpike fund, would lead to an absurd result.

Furthermore, the only part of the Laws of 1983, c. 235:1 not completely addressed by the later law is that which

conditions the State's expenditure on the Town of Merrimack's 50% contribution. Since the Town has already satisfied its financial obligations in this regard, no logical purpose would have been served by including reference to it. The absence of its mention neither cuts against implied repeal nor supports the argument that the Town need not contribute their share. Rather, it points more persuasively to a conclusion that the 1986 Legislature was mindful of the status of the State's road projects and gave them direct consideration in the adoption of the comprehensive ten-year plan.

In my opinion, there is no reasonable construction of these two statutes which would obviate the need for finding the implied repeal of the Laws of 1983, c. 235:1 in its entirety. Therefore, consistent with the conclusion that the Laws of 1986, c. 203 supercede the 1983 funding provision, the Camp Sargent Road relocation and reconstruction should be funded by those monies previously provided by the Town of Merrimack, with the remainder from those appropriated for the improvement of the turnpike system.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Nicolosi".

Diane M. Nicolosi  
Attorney

DMN/m  
#88-019